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IN THE

Supreme Court of the United States

October Term, 1963

No. 712

SIDNEY O. SAMPSON,

Plaintiff-Appellant,

—v.—

CHARLES A. CHURCH, District Director, Internal Revenue Service, HON. DAVID L. LADD, Commr. of Patents and HON. WILBUR D. MILLS, Chairman Ways & Means Committee,

Defendants-Appellees.

SIDNEY O. SAMPSON,

Plaintiff-Appellant,

—v.—

CHARLES A. CHURCH, District Director Internal Revenue Service,

Defendant-Appellee.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Petitioner, Pro Se

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner prays that writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above entitled case as set forth in "Jurisdiction," *infra.*

Citation to Opinion Below

The Order of the District Court for the Southern District of New York is set forth in the Appendix hereto *infra*, p. 23a. The denial of review of the judgment of the District Court by the Court of Appeals for the Second Circuit appears in the Appendix, *infra*, p. 16a.

Jurisdiction

The Order of the District Court for the Southern District of New York was entered on October 9, 1963; Appendix p. 23a *infra*.

Application to the United States Court of Appeals for the Second Circuit to reverse the judgment of the District Court for the Southern District of New York was entered on November 7, 1963, *infra*, p. 3a. Denial of the application was entered November 21, 1963, *infra*, p. 17a.

Motion to the United States Court of Appeals for the Second Circuit to stay issuance of mandate and file application for certiorari to the Supreme Court was granted December 12, 1963, *infra*, p. 31a.

The jurisdiction of this Court is invoked pursuant to United States Code, Title 28, Section 1346 (1), (2), and Rule 19 of this Court.

Questions Presented

1. Whether the subject matter of "tips" is stated in any Section of the Internal Revenue Service Code of 1954.

2. Whether the clause, *Compensation for services*, included in "item 1" of Section 61 of the *Internal Revenue Service Code of 1954* makes a claim for the subject matter of "tips."

3. Whether the reservation clause, *including (but not limited to)*, included in the specification of the "General Definition" of the claims of Section 61 of the *Internal Revenue Service Code of 1954* legally broadens the scope of any of the fifteen (15) listed "items" to *read on* the subject matter of "tips."

Constitutional and Statutory Provisions Involved

1. This case involves ARTICLE XVI OF THE AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

2. This case also involves *The Internal Revenue Service Code of 1954.*

3. This case also involves United States Code, Title 28, Section 1346 (1), (2).

4. This case also involves United States Code, Title 26, Sections 7421, 7422.

5. This case also involves United States Code, Title 35.

Statement

Appellant, SIDNEY O. SAMPSON, respectfully presents this petition for review on the merits of the case under Rule 19 of the Rules of the Supreme Court of the United States, particularly subdivision (b) clause: *an important question of federal law which has not been, but should be, settled by this court;* and under Title 28 of the United States Code, Section 1346 (1), (2).

Appellant pleads that the tax deficiency assessments of the Internal Revenue Service for the years 1959-1960 served on appellant by the above named appellee, CHARLES A. CHURCH, District Director, INTERNAL REVENUE SERVICE, having the non-statutory subject matter of "tips" claimed

therein for collection of additional amounts of "tips" gross income tax assessed therein over the sworn amount of gross income tax that appellant signed for as true, *under the penalty of perjury*, is incontestably defective, because there is no statutory section of law in the *Internal Revenue Service Code of 1954* defining in any way the subject matter of "tips" which the I. R. S. can rely upon to make a legal claim in said deficiency assessments for said subject matter of "tips."

Therefore, appellant claims that the subject matter of "tips" omitted in said Code of 1954, is dedicated to the public as a non-taxable "item" until the time that Congress enacts an honest "tips-tax" law.

How the Federal Questions Were Raised and Decided Below

Appellant is a waiter who for many years prior to the said 1959-1960 "tips" deficiency assessments served on him by the I. R. S., has with clean conscience consistently contributed a substantial percentage of his "tips" added to the wages paid to him as *compensation for services* by his employer, when making out his yearly gross income tax statements; he has always deeply deplored the present injustice of not receiving any concomitant equity accordingly with the retirement benefits contained in the Social Security Act for the "tips" declarations which he voluntarily made in said statements; but said voluntary "tips" declarations have not completely satisfied the I. R. S. The I. R. S. in January 1961 then commenced prosecuting appellant for alleged delinquent "tips" income claimed in said deficiency assessments. This prosecution by the I. R. S. is now in the U. S. Tax Court with appellant appealing via *petition* to the Tax Court, re Docket No. 1958-63, under the provisions of U. S. C. Title 26, Section 7422.

Appellant on April 1, 1963 commenced an action in the District Court, S. D. N. Y. for an answer to the constitutional question of precisely how the I. R. S. construes any section of said Code of 1954 to apply legal tax collection process for the specific amount of "tips" income claimed against appellant in said deficiency assessments. The question was not completely answered in the Order issued by the District Court (see Appendix, p. 23a).

An appeal from said Order of the District Court was made to the Court of Appeals for the Second Circuit comprising substantially the same matters as contained in this petition. This appeal was denied by the Court of Appeals on November 21, 1963 without any decision being made on the merits of the case (see Appendix, p. 17a). Motion to stay issuance of mandate by the Court of Appeals to file an application for certiorari to the Supreme Court of the United States was granted on December 12, 1963 (see Appendix, p. 31a).

Reasons for Granting the Writ

I.

The Internal Revenue Service cannot make any claim in the *Internal Revenue Service Code of 1954* for its prosecution of the subject matter of "tips" being part of taxable gross income tax.

Appellant besides being a waiter is an inventor of educational electronics apparatus, holding the following five (5) United States patents: 2,985,069 and 2,976,372 and 2,971,716 and 2,952,746 and 2,952,416. He has successfully prosecuted both the broad claims and the required restricted claims contained in the claim sections of said patents. Appellant is presently applying in this petition

his technical knowledge of claim construction know-how, gained from his practice of prosecution of claims under the Rules of Practice of the Patent Office. The issued section claims in said patents have statutory prosecution process value against any infringement thereof under U. S. C., Title 35, the same as the statutory prosecution process value against infringement of the issued section claims which were enacted by Congress in said Code of 1954. Therefore, appellant requests that answer be made explaining under what authority of due process of law is it possible for the I. R. S. to prosecute the subject matter of "tips" when there is no relevant section claim of said Code of 1954 cited against appellant in said deficiency assessments—unless the I. R. S. is immune from due process of law under the Constitution. The Courts seem to be unconstitutionally restricted under U. S. C. 26, 7421. (a).

Referring to appellant's appeal from the particular part of the Order of the District Court, page 3, the second paragraph thereof: "Furthermore, . . . without merit." (see Appendix, p. 25a), appellant now respectfully requests that this Court take notice of the specific new issue raised in said second paragraph, to wit, "compensation for services" introduced as *new subject matter* in this case.

On one hand, the Internal Revenue Service has never cited in said deficiency assessments any section of law in said Code of 1954 upon which it could base any definitive claim for said subject matter of "tips" stated in said deficiency assessments. The only claim made by the I. R. S. and applied in said deficiency assessments is the penalty claim, Section 6653 (a) of said Code of 1954, cited therein only to definitively claim its otherwise legal income tax collection process of authorized taxable gross income.

On the other hand, the District Court has precisely stated in said Order, page 3, the second paragraph thereof, the

express term: "compensation for services" which is identical to the express term contained in "item 1" of Section 61 of said Code of 1954, to wit; *Compensation for services* (see Appendix, p. 15a), of which appellant does not admit any such words can "read on" the subject matter of "tips" in this case and in the divisional *petition* case in the Tax Court.

Appellant questions why he must first be "required" to pay anything to the I. R. S. upon service of said deficiency assessments consisting of irregularly amended form-letters introducing the *new subject matter of "tips"*; said form-letters not including any prosecution section claim of said Code of 1954 to therewith institute proper congressional authority for applying legal and constitutional "tips-tax" collection process for said *new subject matter of "tips"* as claimed in said irregularly amended form letters.

Appellant has never admitted that "tips" are "compensation for services".

The I. R. S. has never admitted that "tips" are "compensation for services".

"Compensation for services" being said Order's own introduction of this new subject matter.

Appellant asserts: Unless there is a reference claim existent in said Code of 1954 upon which the I. R. S. can be upheld by this Court, having inclusion of any showing of the word "tips" and/or "gratuities" in any of the over 8,000 sections of said Code of 1954 whereby is shown that the subject matter of "tips" is sufficiently defined for honest, unequivocal, just and legal "compensation for services", then, any unlawful *regulation* that the I. R. S. is presently applying for its prosecution process of said subject matter of "tips" introduced in said deficiency assessments, is therefore illegal and unconstitutional under said 28 U. S. C.,

Section 1346. This is a particular issue which appellant especially requests this Court to decide on the merits of this petition.

Appellant further respectfully requests this Court to analyze the below presented hypotheses, thus to decide the particular issue of "compensation for services" as newly raised in said Order, if the I. R. S. asserts that said "item 1" *Compensation for services* is its legal broad claim that properly defines said subject matter of "tips"; that this matter be considered by this Court in juxtaposition of the job duties that appellant personally performs as a menial service worker employed in the restaurant establishment of his respected employer:

(a) I serve a customer who after being served, does not leave me on the table any "item 1" *Compensation for services* which he is unquestionably entitled in every respect to rightly receive perfect service without paying any added extra charge for said service.

(b) If I ask said customer for the *unreceived* "compensation for services" defined under said Order, then I will be forthwith fired from my job by my employer who pays me regular wages for said "item 1" *Compensation for services* to provide free service to said customer.

(c) Later, in my respective year income tax statement in this case, I did not report said *unreceived* "compensation for services" because I did not receive any percentage of "tips" in this particular instance as claimed for taxable gross income in said statement.

(d) The I. R. S. instigated the present defensive *petition* prosecution in Tax Court respective to said *unreceived* "compensation for services" being a legal part

of my taxable gross income wage, and the action in the District Court.

(e) I have searched throughout said Code of 1954, finding out that "item 1" of said Section 61 and the more than 8,000 other related underlying, supporting sections of said Code of 1954 that rely on the specification of the "General Definition" claim respective to taxable gross income of this subtitle have no inclusion in any section of said Code of 1954, of any word equivalent to "tips" except other than that of the word "gifts" which is shown in the record of this action priorly claimed by appellant for tax exemption purposes (see Appendix, p. 15a). Therefore, there is no possible definition for "tips" made in said "item 1" *Compensation for services* or in any of said 8,000 statutory sections of said Code of 1954 that the I. R. S. can claim for any "tips-tax" collection process.

(f) That said "item 1" of said Section 61 and all of said other 8,000 statutory sections specifically apply only to contractual employment matters of employees and others that require verification by employers' *receipts* for *fees, commissions, and similar items* in the same way as with "item 1" *Compensation for services;* definitely, I could not get any such legal *receipts* on my job.

(g) No recourse in law for prosecuting said customer and said employer is legally provided for in any part of any of said statutory sections of said Code of 1954 for me to lawfully collect said "item 1" *Compensation for services* not received from said customer.

(h) That said "item 1" *Compensation for services* is not even a complete claim in every respect of the usual

canons of claim construction, as applied by the I. R. S. in this case to claim said subject matter of "tips".

(i) While this discussion is limited to a single incident respective to a particular defect in said deficiency assessments, it will be understood that such a single defective working incident as hereby presented is sufficiently applied in this petition to incontestably prove that said "Item 1" *Compensation for services* is not an equivalent means to the subject matter of "tips" in any way, for the I. R. S. to apply any legal tax collection process of "tips-tax".

II.

The reservation clause, to wit, *including (but not limited to)*, included in the specification of the "General Definition" for gross income tax in Section 61 of the *Internal Revenue Service Code of 1954* is illegal and unconstitutional.

A reading by this Court of the juridical decision of the Commissioner of Patents, an agent of government, *re Commissioner of Patents—Ex parte Baer—40 USPQ* (see Appendix, p. 15a), precisely predicts the consequences of the present course of litigation helping support the I. R. S. claim for the subject matter of "tips" as claimed in said deficiency assessments made on irregularly amended form-letters.

It being understood that, *the Constitution is part of every one of the enactments of Congress*, therefore appellant asserts that the I. R. S. is inordinately provided with irregular means to unconstitutionally, *self-legislate* said "Item 1" *Compensation for services* conjunctively with the illegal reservation clause included in the "General Definition" spec-

ification of said Section 61, to wit, *including (but not limited to)* (see Appendix, p. 15a), thus to unconstitutionally and illegally claim and prosecute against appellant the subject matter of "tips" which is not defined in said Code of 1954.

Therefore, if said Order is not reversed by this Court, then, according to said decision of the Commissioner of Patents, quote: *It would further appear that if claims are to be construed only by the prior art and irrespective of their express terms and limitations, the labor of formulating claims and the burden of examination on the basis of prior art is all for naught and wasted effort. It would be far simpler and more logical to dispense with claim writing entirely and to allow the inventor* (Congress) *to state that the disclosed invention* (Code of 1954) *is to be protected by the prior art discovered by the defendant in litigation.*

Therefore, the I. R. S. has irregularly empowered itself, and is supported by the express terms of said new subject matter of "compensation for services" contained in said Order, as predicted by the Commissioner of Patents would be surely obtained during litigation of the case. Thus, the I. R. S. is irregularly empowered to *self-legislate* the subject matter of "tips" into said Code of 1954, instead of the I. R. S. simply notifying the Executive Department and Congress that enactment of an honest "tips-tax" claim is greatly needed as an extra "item" in said Section 61 for honest "tips-tax" collection process.

The United States can greatly increase its revenue with a great many more billions of dollars yearly if a suitable method of weekly withholding of "tips" income is honestly enacted into said Code of 1954 by Congress; thus providing an honest "tips-tax" law satisfactory to all service workers over the present muddling I. R. S. method of mercilessly *persecuting* a few "caught" service workers for alleged delinquent "tips-tax" assessed for many back years, as shown

in the instant case of appellant. This Court should certainly be concerned with this irregular matter of the I. R. S. assessing many years' back-taxes against a few *spot-checked* prosecuted service workers, particularly when they may never be able to pay-up said back taxes during their lifetime. Therefore appellant is rightly appearing before this highest Court seeking justice on this matter.

Therefore, the present Order of the District Court, which includes the *new subject matter* of said "compensation for services" places appellant in an unforeseen, unfortunate position of practically being prejudged guilty of perjury in the Tax Court, if said Order stands and is cited by the I. R. S. against appellant's defensive *petition* in the Tax Court.

Appellant's *petition* in the Tax Court and every other similar "tips" subject matter cases moving in the Tax Court might be summarily dismissed via said Order providing a citable dominating basic Court of Appeals reference against said *petition* and said cases, if said Order is not reversed by this highest Court.

Thus by said Order implying that said "Item 1" *Compensation for services* is equivalent of said subject matter of "tips", appellant's tax statements for 1959-1960 signed as true statements *under the penalty of perjury* are inordinately placed in jeopardy of irreparable damage in the Tax Court.

Therefore, it will be understood that in the divisional *petition* tax case in the U. S. Tax Court, the Internal Revenue Service and appellant are the only principal parties thereto. The subject matter being prosecuted in said divisional *petition* tax case is the *refund* of appellant's voluntary contribution of "tips" made in appellant's gross income tax state-

ments for the years 1959-1960, and is being separately prosecuted under the provisions of 26 U. S. C., Section 7422.

In this divisional tax case in this Court, the Congress which enacted into law the *Internal Revenue Service Code of 1954* and appellant are the only principal parties thereto —the I. R. S. being only a subjective party.

A principal matter in this divisional tax case being prosecuted in this Court is that the reservation clause in the specification part of said Section 61, is seemingly placed in said specification to illegally broaden the scope of the fifteen (15) restricted "item" claims of said Section 61. This illegal reservation clause is asserted by appellant to be unconstitutionally delegated by the Congress to the Executive Department which administers the I. R. S. prosecution process. It should be deleted by Congress accordingly with the expressions made in the priority reference of the Commissioner of Patents.

The damaging consequences of this illegal and unconstitutional delegation of said reservation clause by Congress to the Executive Department being suffered by appellant, is that the complete unlimited and unrestricted broad scope of ARTICLE XVI OF THE AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES, the claim of which reads in part:— *The Congress shall have power to lay and collect taxes on incomes, from whatever source derived.*—is therefore totally applied by the I. R. S. against appellant, discriminatively.

But, Congress did *lay* specific taxes on specific gross income "items" in said Code of 1954. Congress did not *lay* a tax on "'tips". Congress has only claimed fifteen (15) broad "item" claims in said Section 61 including the over 8,000 restricted subsection claims related thereto. No "item" claim for the subject matter of "tips" has yet been enacted by Congress.

Therefore, the subject matter of "tips" is abandoned by Congress and dedicated to the public until the time that Congress enacts an honest "tips-tax" law including necessary provisional statutory sections for legal and constitutional tax collection process by the I. R. S.

Therefore appellant claims that the congressional enactment of said Code of 1954 having inclusion of said reservation clause in said Section 61, construed by the I. R. S. for unlimited and unrestricted prosecution process, damagingly against appellant's divisional *petition* in the Tax Court and in this divisional petition in this Court respective to the subject matter of "tips", is illegal and unconstitutional under the provisions of 28 U. S. C., Section 1346(1), (2).

WHEREFORE, for the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,

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December 23, 1963